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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,663	08/05/2003	Andreas Drost	411.0005	5309
25534	7590	07/01/2004	EXAMINER	
CAHN & SAMUELS LLP 2000 P STREET NW SUITE 200 WASHINGTON, DC 20036			HARTMANN, GARY S	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/633,663

Applicant(s)

DROST ET AL.

Examiner

Gary Hartmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☒ Claim(s) 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/2/4.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

The abstract of the disclosure is objected to because it contains legal phraseology; for example, "said." Correction is required. See MPEP § 608.01(b).

The disclosure is objected to because of the following informalities: reference to the contents of particular claims are not permitted in the specification. Appropriate correction is required.

Claim Objections

Claim 21 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim must refer to parent claims in the alternative (i.e., "or") only. See MPEP § 608.01(n). Accordingly, the claim 21 has not been further treated on the merits.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. In addition to other problems, it appears that in some claims reference numerals are intended to positively recite structure. While the reference

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numerals are permitted in the claims, corresponding structure must be positively recited if applicant intends for the individual components to be considered as being claimed.

With respect to claims 17-19, the language is so confusing that it is not clear what is intended to be claimed. Therefore, claims 17-19 have not been further treated on the merits.

While not indefinite, it is noted that the terms "zero" and "if provided" in claim 7 do not positively recite the structure which follows these recitations. Additionally, dependent claims which include recitations regarding these non-positively recited features (claims 12-15) do not further limit parent claim 7. In order for the limitations of the claims to be considered, they must be positively recited.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 7, 9, 11-15 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Fifield (U.S. Patent Des. 426,317).

Fifield discloses a ground covering element of artificial stone material having recesses (rounded portions, Figure 2, for example) and projections (areas between rounded portions). Retractions have been treated as the same as recesses. Laid adjacent to one another, water penetration passages would be formed.

Each of the recesses, retractions and projections are bounded by a rounded line.

Regarding claim 20, no structure with respect to "dummy gap" is positively recited; however, note Figure 8 of Fifield.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fifield, as applied above.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a trapezoidal shape in order to obtain desired spatial or structural characteristics.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fifield as applied above, and further in view of Appleton (U.S. Patent 3,903,702).

Fifield teaches recesses to be uniformly spaced from the outer edge of the block. Appleton teaches a block using a variety of back spacing (Figure 6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the back spacing of Appleton with the block of Fifield in order to obtain a more stable interlocking structure, in accordance with the teaching of Appleton.

Allowable Subject Matter

Claims 1-6 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action. Note that this allowability

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is contingent upon the "consists of" terminology with respect to the three projections, three recesses, as well as the additional positively recited structure.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Hartmann whose telephone number is 703-305-4549. The examiner can normally be reached on Monday through Friday, 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary Hartmann
Primary Examiner
Art Unit 3671

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